COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office

March 13, 2015 through March 19, 2015

Each week the Clerk's Office prepares a list of recently-filed appeals, indicating short title, jurisdictional predicate, subject matter and key issues. Some of these appeals may not reach decision on the merits because of dismissal, on motion or sua sponte, or because the parties stipulate to withdrawal. Some appeals may be selected for review pursuant to the alternative procedure of Rule 500.11. For those appeals that proceed to briefing in the normal course, the briefing schedule generally will be: appellant's brief to be filed within 60 days after the appeal was taken; respondent's brief to be filed within 45 days after the due date for the filing of appellant's brief; and a reply brief, if any, to be filed within 15 days after the due date for the filing of respondent's brief.

The Court welcomes motions for amicus curiae participation from those qualified and interested in the subject matter of these newly filed appeals. Please refer to Rule 500.23 and direct any questions to the Clerk's Office.

HARRIS v CITY OF NEW YORK:
2ND Dept. App. Div. order of 2/2/15; denial of reargument; sua sponte examination whether App. Div. orders finally determine the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;
DISMISSAL AND NONSUIT - FAILURE TO SERVE COMPLAINT - FAILURE TO APPEAR - REASONABLE EXCUSE FOR DEFAULT; JUDGMENTS - RES JUDICATA - ISSUES THAT WERE OR COULD HAVE BEEN RAISED IN PRIOR ACTION;

Supreme Court, Kings County, as relevant here, (1) granted the motion of defendant Ezra Cohen pursuant to CPLR 3012(b) to dismiss the action insofar as asserted against him for failure to serve a timely complaint; (2) denied plaintiff's cross motion pursuant to CPLR 3012(d) to extend the time to serve the complaint upon defendant Ezra Cohen; (3) denied plaintiff's separate motion pursuant to CPLR 3215 for leave to enter judgment against defendants NAPCO Holdings, LLC, Peter Nakos, and Brooklyn Housing and Family Services on the issue of liability, upon those defendants' failure to appear or answer; (4) granted so much of the cross motion by those defendants which were pursuant to CPLR 5015(a)(1) to vacate their defaults in appearing and answering, pursuant to CPLR 2004 to extend their time to appear or answer, and pursuant to CPLR 3211(a) to dismiss the complaint insofar as asserted against them; and (5) in effect, granted so much of the cross motion of the New York City defendants which was pursuant to CPLR 3211(a)(5) to dismiss the complaint insofar as asserted against them, based on the doctrine of res judicata; App. Div. affirmed and, thereater, denied plaintiff's motion for leave to reargue the appeal.

LITTLETON CONSTRUCTION LTD. v HUBER CONSTRUCTION, INC., et al.:
4TH Dept. App. Div. order of 2/6/15; reversal with a two-Justice dissent;
CONTRACTS - BREACH OF CONTRACT - JOINT VENTURE FOR PUBLIC SCHOOL RENOVATION PROJECTS - CLAIM THAT OPERATING AGREEMENT BETWEEN PARTIES WAS FRAUDULENT - WHETHER MATERIAL ISSUES OF FACT WERE RAISED REGARDING FORGERY OF THE DOCUMENT; SUMMARY JUDGMENT; Supreme Court, Erie County, as relevant here, denied in part defendants' motion for summary judgment dismissing the amended complaint; App. Div. reversed, granted defendants' motion for summary judgment in its entirety, and dismissed the amended complaint.

RIVERA, &c. v MONTEFIORE MEDICAL CENTER:
1ST Dept. App. Div. order of 12/4/14; affirmance; leave to appeal granted by App. Div., 3/3/15;
DISCLOSURE - SCOPE OF DISCLOSURE - MEDICAL EXPERT - ADEQUACY OF RESPONSE TO DEMAND FOR INFORMATION CONCERNING EXPERT WITNESS - CHALLENGE TO APPELLATE DIVISION HOLDING THAT TRIAL COURT PROPERLY DENIED AS UNTIMELY PLAINTIFF'S APPLICATION DURING TRIAL TO PRECLUDE DEFENDANT'S EXPERT FROM TESTIFYING THAT A SUDDEN HEART ATTACK, RATHER THAN PNEUMONIA, CAUSED DECEDENT'S DEATH ON GROUND THAT SUCH TESTIMONY CAME AS A SURPRISE BECAUSE DEFENDANT'S EXPERT DISCLOSURE STATEMENT PURSUANT TO CPLR 3101(d) LACKED SPECIFICITY AS TO EXPERT'S OPINION ON CAUSATION - WHETHER TRIAL MOTION WAS UNTIMELY BECAUSE PLAINTIFF FAILED TO OBJECT TO LACK OF SPECIFICITY IN DEFENDANT'S EXPERT DISCLOSURE STATEMENT UPON RECEIPT OF THAT DOCUMENT - WHETHER EXPERT TESTIMONY CONCERNING HEART ATTACK SHOULD HAVE BEEN PRECLUDED AS UNDULY SPECULATIVE;

Supreme Court, Bronx County, as relevant here, granted defendant's motion to reduce the jury's award for future economic loss attributable to household services by reducing the award from $680,000 to $340,000, and denied plaintiff's cross motion to strike the testimony of defendant's expert concerning the cause of the decedent's death and to set aside the award of $0 for conscious pain and suffering; App. Div. affirmed.